

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

**BAXLEY CORPORATION, LLC
DEBTOR.**

**CASE NO. 22-00397-5-DMW
CHAPTER 7**

MOTION FOR SANCTIONS

NOW COMES, Baxley Leasing, LLC, and Martha Ginger Baxley (collectively “Movants”), by and through counsel, and respectfully move this Court for an Order sanctioning CITIZENS ONE BANK or its agents including, but not limited to, LENDERS & FLEET SERVICES, INC., (collectively “Citizens One”) for failure to comply with this Court’s Order requiring turnover of a 2016 Dodge Ram Truck (“Truck”) to Movants. In support of this, Movants state to the Court:

1. On February 23, 2022, Baxley Corporation LLC (“Corp”) filed a petition for relief under Chapter 7 of the Bankruptcy Code (the “Petition Date”) and James B. Angell is the duly appointed Chapter 7 Trustee.

2. On March 9, 2022, the Trustee file an Adversary Proceeding asserting that the Debtor was an alter ego of the Debtor.

3. On May 25, 2022, the Trustee filed a Motion to Approve Compromise and Settlement with Baxley Leasing, LLC and Baxley Construction Co., Inc., Pursuant to Fed. R. Bankr. P. 9019 [DE-205].

4. The Order Granting Trustee’s Motion to Approve Compromise was entered on June 28, 2022 [DE-237].

5. The Settlement, among other things, involved Baxley Leasing providing a promissory note in the amount of \$249,461.37 payable to the Debtor’s Estate and secured by certain equipment and vehicles, including the 2016 Dodge Ram Truck and 2010 BMW X5 (collectively “Vehicles”), owned or to be acquired by Baxley Leasing, LLC. In essence, Baxley Leasing was buying the equity of the Equipment and Vehicles from the Trustee for the benefit of the Debtor’s Estate.

6. To protect this interest, it was agreed that Movants with the support of the Trustee would move the Bankruptcy Court to extend the Automatic Stay.

7. The automatic stay provided by 11 U.S.C. § 362(a)(3) is designed to stop “any act to obtain possession of property of the estate or of property from the estate or to exercise control

over property of the estate”

8. Here, the Equipment and Vehicles, including the Truck, are owned by Baxley Leasing and the equity is property of the Debtor’s Estate pursuant to the security agreement provided under the settlement agreement.

9. On or about June 10, 2022, Movants paid Citizens One and requested the Truck be handed over.

10. Citizens One refused to deliver the Truck to Movants. Lenders informed counsel for the Debtor that Citizens needed to provide a release and Citizens claimed the bankruptcy somehow prevented the Truck from being delivered to the Movants.

11. To facilitate this misunderstanding, Movants filed a Motion to Extend Automatic Stay on August 9, 2022 [DE-277] and the Order Allowing Motion to Extend Stay was entered on September 2, 2022 [DE-292].

12. Despite this Citizens One and Lenders continued to insist that they did not have authority because of the bankruptcy to deliver the Truck to Movants.

13. In a last gasp effort, Movants filed a Motion for Turnover of the Truck on September 30, 2022 [DE-301].

14. The Order Allowing Motion for Turnover was entered on November 1, 2022 [DE-308] and required “CITIZENS ONE BANK or its agents including, but not limited to, LENDERS & FLEET SERVICES, INC. (collectively “Citizens One”), to turnover a 2016 Dodge Ram Truck (“Truck”) to Movants” within 7 days of entry of the Order.

15. On November 1, 2022, counsel for Movants emailed this Order to Citizens One at latestagecollections@citizensbank.com and Lenders at jrudden@lendersfleet.com. These are email addresses previously used to communicate with these parties. In addition, counsel for Movants had numerous calls with Citizens One and Lenders demanding they comply with the Order and turnover the Truck to Movants.

16. On November 8, 2022, Citizens One stated it was providing the release to Lenders. However, Lenders stated that the proper release was not provided. This game went back and forth between Citizens One and Lenders until on November 15, 2022, Lenders informed counsel for Movants that Citizens One required the Movants to pay \$6,290.00 to turnover the Truck because of storage fees.

17. Counsel for Movants responded that Movants had been trying to get the truck since it paid in full in June 2022 and would not be responsible for their delay in delivering the Truck and they had until November 15, 2022, to turnover the Truck as required by the Turnover Order.

18. A copy of this Motion was emailed to Citizens One and Lenders on November 15, 2022, prior to filing.

19. The Turnover Order provided that “Failure to comply with this Order will require Citizens One to be brought before this Court to determine appropriate sanctions for violations of the Automatic Stay in an amount determined.” Citizens One was defined to include Lenders.

20. Accordingly, Movants ask this Court for a hearing for Citizens One and Lenders to explain why they are not in a position to comply with this Court’s Order by turning over the Truck to Movants and be sanctioned for failure to comply.

WHEREFORE, Baxley Leasing, LLC, and Martha Ginger Baxley, respectfully ask this Court enter an Order requiring Citizens One and Lenders to appear before this Court show cause for failing to abide by this Courts Turnover Order and be sanctioned for violating this Turnover Order and for violations of the Automatic Stay in an amount determined by this Court.

Respectfully submitted, this the 15th day of November 2022.

EVERETT GASKINS HANCOCK LLP

/s/ William H. Kroll

William H. Kroll
N.C. State Bar No.
39149 PO Box 911
Raleigh, NC 27602
(919) 755-0025
(919) 755-0009 (fax)
bill@eghlaw.com

*Counsel for Baxley Leasing, LLC and
Martha Virginia Baxley*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Notice** and **Motion for Turnover** was electronically filed through CM/ECF or served via the U.S. postal service, postage prepaid, as noted:

Via CM/ECF:

Bankruptcy Administrator

James B. Angell
Howard Stallings, From, Atkins,
Angell & Davis, P.A.
Chapter 7 Trustee

Via Certified U.S. postal service, postage prepaid and email:

Citizen One Bank
Attn: Manager, Agent, Officer
One Citizens Bank Way, JCA110
Johnston, RI 02919

Email:
latestagecollections@citizensbank.com

Lenders & Fleet Services, Inc.
Attn: Manager, Agent, Officer
PO Box 814
Branford, CT 06405

Lenders & Fleet Services, Inc.
Attn: Manager, Agent, Officer
20 NE Industrial Road
Branford, CT 06405

Email: jrudden@lendersfleet.com

This the 15th day of November 2022.

/s/ William H. Kroll
William H. Kroll